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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,910	09/26/2000	Thomas Werner	GR-98-P-1061	2580
466	7590	01/15/2004		
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER NGUYEN, TOAN D	
			ART UNIT	PAPER NUMBER

2665

DATE MAILED: 01/15/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/600,910

Applicant(s)

WERNER ET AL.

Examiner

Toan D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: The serial number and the filing date of the specification are not filled out in the blank on page 1 of Declaration.

### ***Drawings***

2. The drawing is objected to because the drawing elements in figure 1 need descriptive legends.

Correction is required.

### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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4. The abstract of the disclosure is objected to because it is more than 150 words.

Correction is required. See MPEP § 608.01(b).

5. The disclosure is objected to because of the following informalities: The specification is objected to as failing to provide proper heading for Field of the Invention, Description of the Related Art, Summary of the Invention, Brief Description of the Drawings, and Detailed Description of the Invention.

Appropriate correction is required.

#### ***Claim Objections***

6. Claims 2, 4 and 5 are objected to because of the following informalities:

In claim 2 line 4, it is suggested to change “the EOC channel” to --- an embedded operations channel ---.

In claim 4 line 3, it is suggested to change “the maximum bandwidth of the predetermined bandwidths” to --- a maximum bandwidth of one of the plurality of predetermined bandwidths ---.

In claim 5 line 6, it is suggested to change “the ATU-C” to --- an ATU-C ---.

In claim 5 lines 6, 7 and 8, it is suggested to change “the ADSL system” to --- an ADSL system ---.

In claim 5 line 7, it is suggested to change “the ATU-R” to --- an ATU-R ---.

In claim 5 line 8, it is suggested to change “the EOC channel” to --- an embedded operations channel ---.

Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Timm et al. (EP 0806852 A2) in view of Hodge et al. (U.S. Patent 5,594,491).

For claims 1 and 2, Timm et al. disclose a multimode digital modem, comprising the following steps:

- establishment of a connection between the user terminal (6) and the server (3) at least partly by means of an ADSL connection (12) (figures 2a-e, page 7 lines 55-58 and page 8 lines 3-15),

- transmission (8) of bandwidth selection data from the user terminal (6) to the network management system (4) assigned to the server (3) (page 12 lines 53-59), and

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- transmission of information data from the server (3) to the user terminal (6) via the ADSL connection (12) and/or in the opposite direction with a bandwidth corresponding to the previously transmitted bandwidth selection data (page 12 lines 53-59).

However, Timm et al. do not disclose in which case the network management system (4) communicates billing data to a billing device (5), assigned to the server (3), in a manner dependent on the previously transmitted bandwidth selection data. In an analogous art, Hodge et al. disclose the network management system (4) communicates billing data to a billing device (5), assigned to the server (3), in a manner dependent on the previously transmitted bandwidth selection data (col. 5 lines 10-17). Hodge et al. disclose further the bandwidth selection data are transmitted via the EOC channel (8) of the ADSL connection (12) (col. 5 lines 10-17 as set forth in claim 2).

One skilled in the art would have recognized a billing device to use the teachings of Hodge et al. in the system of Timm et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the billing device as taught by Hodge et al. in Timm et al.'s system with the motivation being to provide each subscriber an associated settop box having means for requesting and paying for said video program (col. 8 lines 61-63).

For claim 3, Timm et al. disclose prior to the transmission (8) of the bandwidth selection data to the user terminal (6), a plurality of predetermined bandwidths which can be selected by the user are transmitted (figure 7a, page 15 lines 8-32). However, Timm et al. do not disclose displayed on a display device (14) of the user terminal (6). In an analogous art, Hodge et al. disclose displayed on a display device (14) of the user terminal (6) (col. 5 lines 10-17).

One skilled in the art would have recognized a display device (14) of the user terminal (6)

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to use the teachings of Hodge et al. in the system of Timm et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the display device (14) of the user terminal (6) as taught by Hodge et al. in Timm et al.'s system with the motivation being to select a channel from a channel selector (col. 5 lines 14-17).

For claim 4, Timm et al. disclose the maximum bandwidth of the predetermined bandwidths that can be selected is set in a manner dependent on the system capabilities (page 16 lines 25-26).

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Timm et al. (EP 0806852 A2) in view of Hodge et al. (U.S. Patent 5,594,491) further in view of Sistanizadeh et al. (U.S. Patent 6,101,182).

For claim 5, Timm et al. in view of Hodge et al. disclose once the bandwidth selection data have been received, the network management system (4) transmits setting data to the ATU-C (2) of the ADSL system, which forwards the setting data to the ATU-R (1) of the ADSL system via the EOC channel (8) of the ADSL system for the purpose of synchronizing the settings (page 18 lines 2-53).

However, Timm et al. in view of Hodge et al. do not disclose to the ATU-C (2) and ATU-R (1) of the ADSL system. In an analogous art, Sistanizadeh et al. disclose the ATU-C (2) and ATU-R (1) of the ADSL system (figure 4A, col. 6 lines 28-30).

One skilled in the art would have recognized the ATU-C (2) and ATU-R (1) of the ADSL system to use the teachings of Sistanizadeh et al. in the system of Timm et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the ATU-

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C (2) and ATU-R (1) of the ADSL system as taught by Sistanizadeh et al. in Timm et al.'s system with the motivation being to terminate the access loop on ADSL modems (col. 6 line 28).

***Contact Information***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan D Nguyen whose telephone number is 703-305-0140. The examiner can normally be reached on Monday- Friday (7:00AM-4:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Huy Vu can be reached on 703-308-6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

*Toan D. Nguyen*

Toan D. Nguyen